

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #10	CCRB Case #: 201709469	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/11/2017 10:00 PM	Location of Incident: South Street Bike and Peck Slip	Precinct: 01	18 Mo. SOL 5/11/2019	EO SOL 5/11/2019	
Date/Time CV Reported Mon, 11/13/2017 1:16 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 11/13/2017 1:16 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Steven Schwartz	06532	957145	005 PCT
2. POM Armando Berrios	15168	951543	005 PCT
3. POM Michael Algerio	16263	952394	005 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Algerio	Abuse: Police Officer Michael Algerio threatened to arrest § 87(2)(b)	
B.POM Michael Algerio	Abuse: Police Officer Michael Algerio refused to provide his name to § 87(2)(b)	
C.POM Steven Schwartz	Abuse: Police Officer Steven Schwartz refused to provide his name to § 87(2)(b)	
D.POM Armando Berrios	Abuse: Police Officer Armando Berrios refused to provide his name to § 87(2)(b)	

Case Summary

On November 13, 2017, § 87(2)(b) filed the following complaint with the CCRB. On November 11, 2017, at approximately 10:00 p.m., § 87(2)(b) was riding a bicycle northbound on the South Street bicycle path in Manhattan. Her friend § 87(2)(b) accompanied § 87(2)(b) on another bicycle. When they were underneath the Brooklyn Bridge, they encountered an unmarked vehicle driven by PO Steven Schwartz, PO Armando Berrios and PO Michael Algerio of the 5th Precinct. Feeling that the officer's driving on the bicycle path was unsafe, § 87(2)(b) and § 87(2)(b) followed the officers as they drove south and stopped them in the vicinity of the South Street bicycle path near Peck Slip. PO Algerio threatened to arrest § 87(2)(b) if she did not move (**Allegation A: Abuse of Authority** - § 87(2)(g) § 87(2)(b)) asked the officers for their names and which precinct they were from. The officers allegedly drove away without providing their names (**Allegations B, C and D: Abuse of Authority** - § 87(2)(g)) No arrests were made and no summonses were issued.

There was no video of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Michael Algerio threatened to arrest

§ 87(2)(b)

It is undisputed that PO Algerio threatened to arrest § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were riding their bicycles north on the South Street bicycle path when they saw an unmarked vehicle driving south on the bicycle path with no lights on. They were both alarmed at the sight due to the terrorist attack on the Hudson River Greenway a few weeks prior. They both moved aside and allowed the vehicle to pass. § 87(2)(b) saw that the occupants of the vehicle were uniformed police officers. § 87(2)(b) and § 87(2)(b) both denied saying anything to the police at this time. § 87(2)(b) and § 87(2)(b) followed the police vehicle on their bicycles and caught up to it as it was waiting to make a right turn from the bicycle path onto South Street. § 87(2)(b) stopped her bicycle on the front passenger side - the right side of the vehicle and knocked on the front passenger window. PO Berrios in the front passenger seat lowered his window and she asked him why they had been driving on a bicycle path in the dark with no lights on. PO Berrios stated that the officers were there for the safety of the public when PO Algerio exited the vehicle walked toward § 87(2)(b) and told her, "We could have you arrested." PO Algerio then cited a criminal code which § 87(2)(b) did not recall. (**Board Review 1**)

§ 87(2)(b)'s statement was generally consistent with § 87(2)(b)'s. § 87(2)(b) and § 87(2)(b) both stated that § 87(2)(b) was at the rear of the police vehicle while § 87(2)(b) was at the front. § 87(2)(b) stated that he caught up to the police vehicle first as it was waiting to turn onto the road and that he took pictures of the rear license plate (**Board Review 2**). § 87(2)(b) added that an officer from the vehicle told § 87(2)(b) to back away and that she did not, before all of the officers exited the vehicle and walked towards her on foot. § 87(2)(b) did not recall the

PO Algerio (**Board Review 4**), PO Berrios (**Board Review 5**) and PO Schwartz (**Board Review 6**) stated that the vehicle had an electrical malfunction which caused the headlights to turn off by themselves. When they drove past § 87(2)(b) she told the officers that their lights were off. PO Algerio thanked her, turned the lights on and continued driving. However, shortly after departing, the lights went off again. § 87(2)(b) caught up to the police vehicle and stopped her bicycle in front of it. PO Algerio stated that by blocking the vehicle and stating that she was conducting a “citizen’s stop” of the police, she was committing obstruction of governmental administration. PO Schwartz also stated that § 87(2)(b) stated she was making a “citizen’s stop.” PO Berrios stated that when § 87(2)(b) stopped her bicycle in front of the vehicle, she yelled something which he could not hear initially. PO Berrios then exited his vehicle and heard her yell, “Why were your lights off?” All three officers exited the vehicle. PO Algerio was at the front driver’s side, PO Berrios was at the front passenger door and PO Schwartz was at the rear passenger door. PO Algerio stated he told § 87(2)(b) “If you don’t remove your bicycle from the vehicle’s path, I’m going to be forced to arrest you for obstruction of governmental administration 195.05.” PO Berrios and PO Schwartz both stated that they did not recall hearing any officer tell § 87(2)(b) that she could be arrested.

According to NY Penal §195.05: “A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference....” (**Board Review 7**)

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Michael Algerio refused to provide his name to § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Steven Schwartz refused to provide his name to § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Armando Berrios refused to provide his name to § 87(2)(b)

It is undisputed that § 87(2)(b) asked the officers for their names. § 87(2)(g)

§ 87(2)(b) stepped back from the police vehicle and asked aloud “What are your names and what precinct are you from?” § 87(2)(b) claimed that PO Algerio returned to the vehicle without replying. One of the officers whom § 87(2)(b) could not recall stated, “5th Precinct. 5th Precinct.” § 87(2)(b) did not hear any officer provide their name. The officers then drove away in their vehicle. § 87(2)(b) heard § 87(2)(b) ask the officers which precinct they were from and heard the officers reply that they were from the 5th Precinct. He did not recall whether she requested anything else from the officers and did not recall what else the officers said

PO Algerio stated that § 87(2)(b) asked the officers for their names and shield numbers. PO Algerio stated that he responded by saying, “Algerio 1623, 5th Precinct.” He stated that PO Berrios provided his name and shield number as well, but § 87(2)(b) did not appear to hear because she asked, “What did you say?” PO Algerio then repeated PO Berrios’s name and shield number to her. PO Algerio did not recall whether PO Schwartz was present during this incident, but stated that all officers present provided their information as requested. PO Berrios stated that PO Schwartz was present and that all three officers provided their names and shield numbers verbally one at a time. He did not hear § 87(2)(b) ask anyone to repeat the information. PO Schwartz also stated that all three officers provided their names and shield numbers one at a time and that § 87(2)(b) did not convey that she had any difficulty hearing them.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first and only complaint filed by § 87(2)(b) (**Board Review 8**).
- This is the only complaint filed against PO Schwartz in his three year tenure at the NYPD.
- PO Algerio has had two other complaints involving two allegations filed against him in his five year tenure at the NYPD. None of the allegations have been substantiated and § 87(2)(g)
- PO Berrios has had one other complaint involving two allegations filed against him in his six year tenure at the NYPD. § 87(2)(b).

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b)
- An enquiry to the Office of the New York City Comptroller indicated no notices of claim were filed for this incident.

Squad No.: _____

Investigator:	_____	<u>Inv. Simon Wang</u>	<u>04/09/18</u>
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date